

DA 03-3064
Released: October 8, 2003

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, DC 20554
October 8, 2003

In Reply Refer to:
1800B3-JWR
NAL/Acct No.: MB20031810051

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Arthur H. Hardy, Esq.
Fleischman & Walsh
1400 16th Street, N.W., Suite 600
Washington, DC 20036

In re: WWGB(AM), Indian Head, MD
Facility No. 71245
File No. BR-20030530ASK

Dear Applicant:

This letter refers to the captioned application of Good Body Media, LLC ("GBM") for renewal of license for station WWGB(AM), Indian Head, Maryland. For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to GBM for violation of the Commission's rule regarding a broadcast station's public inspection file, 47 C.F.R Section 73.3526, and we grant the WWGB(AM) license renewal application.

Public file rule violation. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 has been placed in the station's public inspection file at the appropriate times. GBM indicated "No" to that certification, attaching an Exhibit explaining that although it has placed a list of its time brokers and their programming contracts in the public file since acquiring WWGB(AM) in July 2002, "not until recently" has GBM prepared issues/programs lists as prescribed by the Commission's rules. GBM states that formal issues/programs lists have now been prepared and placed in the public file for each quarter that GBM has been the licensee and that it will ensure this continues to be done on a quarterly basis.

Section 73.3526 of the Commission's Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely

information at regular intervals throughout the license period.¹ In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.²

Section 503(b) of the Communications Act, 47 U.S.C. § 503(b) and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.³ A continuing violation is "repeated" if it lasts more than one day.⁴

The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations.⁵ In this case, the violations were admitted to the Commission in the context of the license renewal application, and the licensee has corrected the violation and instituted measures to prevent its recurrence. On the other hand, the violation continued from July 2002 until "recently," a period during which the public file was not complete. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the violation in this case.⁶ However, because of GBM's voluntary disclosure of its violation, we will adjust the forfeiture amount downward to the amount of \$ 3,000.⁷

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and

¹ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (April 3, 1997), 13 FCC Rcd 4102 (1997) citing *License Renewal Applications of Certain Commercial Radio Stations*, 8 FCC Rcd 6400 (1993).

² See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999)(citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

³ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991).

⁴ *Id.*, 6 FCC Rcd at 4388.

⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* FCC 99-407 (released December 28, 1999).

⁶ See *KLDT-TV 55, Inc.*, 10 FCC Rcd 3198 (1995) and *Barry D. Wood, Esq.*, 7 FCC Rcd 6262 (FOB 1992).

⁷ See *Surrey Front Range Limited Partnership*, 7 FCC Rcd 6361 (FOB 1992) (voluntary disclosure constitutes a downward adjustment criterion).

(3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁹

The public inspection file rule serves the critical function of making available to the public important information regarding programs that provided a station’s most significant treatment of community issues during the license term. On balance, however, we find that GBM’s violation of Section or 73.3526 does not constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁰ Further, we find that station WWGB(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹¹

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503 (b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission’s Rules, 47 U.S.C. Sections 0.283 and 1.80, Good Body Media, LLC is hereby advised of its apparent liability for a forfeiture of \$3,000 for willfully and repeatedly violating Section 73.3526.

Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission’s rules, that within thirty days of the release of this Notice, GBM SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture may be made by credit card through the Commission’s Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the

⁸ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁰ For example, we do not find here that the licensee’s station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate WWGB(AM) in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Heart of the Black Hills Stations*, 32 F.C.C.2d at 200. *See also Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹¹ *See* 47 U.S.C. § 309(k).

Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the NAL/Account number referenced in the caption of this document (MB20031810051).

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

Finally, IT IS ORDERED, that the application (File No. BR-20030530ASK) of Good Body Media, LLC for renewal of license for station WWGB(AM), Indian Head, Maryland IS GRANTED.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau

cc: Good Body Media, LLC